

**Mercersburg Youth Baseball, Plaintiff v.
William Demory, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action - Law
No. 2012-1327

Headnotes

Summary judgment, replevin, injunction, preliminary injunction, non-profit corporation law, organizational meeting, unable to act

- 1.) "If a designated director or an incorporator dies or is for any reason unable to act at the meeting, the other or others may act. If there is no other designated director or incorporator able to act, any person for whom a director or incorporator was acting as agent may act or appoint another to act in his stead." 15 Pa.C.S. § 5310 (c).
- 2.) As Clyde Seville was no longer the Vice-President of Mercersburg Little Leagues he was unable to act, within the meaning of 15 Pa.C.S. § 5310(c), on behalf of Mercersburg Little Leagues to hold an organization meeting of the non-profit corporation whose articles of incorporation he had previously filed.
- 3.) As Plaintiff judicially admitted that all requested baseball equipment was turned over in its Motion to Dissolve Preliminary Injunction, summary judgment in favor of Defendant on the replevin claim as to the baseball equipment is proper.
- 4.) "Generally, replevin is the proper remedy to recover the possession of any kind of personal property of which the plaintiff has the right to present possession, which is in the possession of and claimed by another...In addition, money, if easily susceptible to ready and positive identification, may be the subject property in a replevin action." 17 Standard Pennsylvania Practice 2d § 96:18 Replevin.
- 5.) Bank accounts are not the appropriate subject of a replevin action.
- 6.) There is a material issue of fact as to whether Plaintiff is entitled to injunctive relief and therefore, summary judgment is denied as to the injunction claim.

Appearances:

James M. Stein, Esquire., *Attorney for Plaintiff*

Matthew R. Wendler, Esquire., *Attorney for Defendant*

OPINION

Before Krom, J.

Presently before the Court for review is a Motion for Summary Judgment filed by William Demory ("Defendant"). For the reasons that follow the Court grants in part and denies in part Defendant's Motion for Summary Judgment.

Procedural History/ Factual Background

This litigation stems from a disagreement about whether a youth baseball league should be affiliated with Little League Baseball, Incorporated.

Defendant became President of the board of Mercersburg Little Leagues, an unincorporated association, in August of 2011 when he ran unopposed for the position. Initially, the board had thirteen members; however, only nine members remained when the board voted on February 8, 2012 to become officially affiliated with Little League Baseball, Incorporated. After Mercersburg Little Leagues became officially affiliated with Little League Baseball, Incorporated, Defendant sent notices to parents and guardians of children who were registered for the 2012 season with the date for player evaluations (a Little League Baseball, Incorporated requirement). In response to the announcement about the affiliation with Little League Baseball, Incorporated and player evaluations, over one hundred members¹ came to the board meeting on February 28, 2012, to discuss what they considered to be a hasty

¹ It is the understanding of the Court that "members" of the Mercersburg Little Leagues were parents and guardians who paid the registration fee for their child/ children.

decision for Mercersburg Little Leagues to become affiliated with Little League Baseball, Incorporated. When Defendant left the meeting, the members believed that he had resigned as President.

Defendant and other members of the Mercersburg Little Leagues received a letter that there would be a “meeting of the membership of Mercersburg Little Leagues” on March 8, 2012 at 6:00 p.m.² At the meeting on March 8, those members present elected a new board (which did not include Defendant) to manage Mercersburg Little Leagues, the unincorporated association.³ Jason Ellis, who had been elected President of Mercersburg Little Leagues on March 8, 2012, provided written notice to the members of Mercersburg Little Leagues of a meeting on March 28, 2012. At the meeting on March 28, 2012, the members voted to terminate the unincorporated association known as Mercersburg Little Leagues and transfer the association’s assets to the non-profit corporation incorporated by Clyde Seville during his term as Vice-President of Mercersburg Little Leagues. The members of the corporation then authorized Jason Ellis to take the necessary steps to change the corporation’s name to Mercersburg Youth Baseball, which he did. Defendant maintains that he, along with Jim Slemph and Cliff Pine, are on the board of the Mercersburg Little Leagues, now with the name Mercersburg Little League. At the heart of this litigation is whether Mercersburg Youth Baseball or Mercersburg Little League is the successor of Mercersburg Little Leagues.

Mercersburg Youth Baseball (“Plaintiff”) commenced this action by filing the Complaint on April 2, 2012. The Complaint contains two counts; one for replevin and one for injunction. In the count for replevin, Plaintiff asserts that Defendant is in possession of baseball equipment, records, membership lists, rosters, and funds that belong to Plaintiff. *Complaint* ¶ 14. Through the injunction, Plaintiff seeks to enjoin Defendant from representing himself as an officer of Plaintiff and remaining a signatory of Plaintiff’s bank account. *Id.* ¶ 15.

Simultaneously with the filing of the Complaint, Plaintiff filed a Petition for Injunctive Relief. In the Petition for Injunctive Relief, Plaintiff asserts that Defendant “has in his possession some equipment belonging to Plaintiff, including, but not limited to, balls, bats, helmets, catcher’s equipment, and other necessary equipment for the proper function of a youth baseball league. *Petition* ¶ 4. Plaintiff also alleges that Defendant has in his possession records, rosters, and membership lists belonging to Plaintiff and that Defendant remains a signatory on Plaintiff’s bank account. *Id.* ¶ 5. Judge Richard J. Walsh signed an Order for Preliminary Injunction directing Defendant to deliver “all baseball equipment, records, membership lists, rosters, and any other items that he obtained from the baseball organization formerly known as Mercersburg Little Leagues, and now known as Mercersburg Youth Baseball.” The hearing scheduled for April 5, 2012 was canceled by the Court upon the filing of a Motion to Dissolve the Preliminary Objection by Plaintiff. At that time, Plaintiff asserted that they have received all of the desired items which were the subject of the Preliminary Injunction. *Motion to Dissolve* ¶ 3.

Defendant filed an Answer with New Matter on May 4, 2012.⁴ The essence of Defendant’s Answer is that there are two youth baseball organizations, Mercersburg Youth Baseball and Mercersburg Little League (a Little League Baseball, Incorporated affiliated league). According to Defendant, he is the elected President of Mercersburg Little League and that the bank account, membership lists, and baseball equipment that Plaintiff seeks to recover belong to Mercersburg Little League. *Answer* ¶¶ 4, 12, 14. Defendant asserts that Plaintiff is an unincorporated association which does not have the capacity to maintain a legal action. *Id.* ¶¶ 1, 18-21.

Plaintiff filed an Answer to New Matter on May 22, 2012.

Plaintiff filed a Motion for Sanctions on August 7, 2012. Hearings on the Motion for Sanctions were held on December 13, 2012 and January 7, 2013. By agreement of the parties the Motion for Sanctions was withdrawn. On January 7, 2013 Senior Judge John R. Walker entered an Order of Court directing the parties to pursue resolving this matter outside of court and update the Court in four to six weeks of the progress.

Counsel for Defendant⁵ informed the Court that the parties had not reached a resolution in a letter dated February 21, 2013. On February 26, 2013, this case was re-assigned to Judge Angela R. Krom.

On September 13, 2013, Defendant filed a Summary Judgment Motion,⁶ Brief in Support of Summary Judgment Motion, and Appendix to Summary Judgment Motion.⁷ Plaintiff filed an Answer to the Motion for Summary Judgment which included a New Matter, along with a Brief in Opposition on October 11, 2013. On October 29, 2013 Defendant filed a Reply in Support of Summary Judgment Motion, along with a Supplement to Summary Judgment

² The letter was not signed, nor was there a return address on the envelope. However, it was established through discovery that Vickie Ellis, Bonnie Line, and Dean Heinbaugh were responsible for writing and sending the letter.

³ The Court recognizes that Defendant believes that the meetings on March 8, 2012 and March 28, 2012 are legally insignificant to the unincorporated association known as Mercersburg Little Leagues.

⁴ Defendant filed pro se, but was aided by an attorney in preparing his response.

⁵ Attorney Matthew Wendler entered his appearance on behalf of Defendant on August 27, 2012.

⁶ The Court notes that Defendant’s four paragraph Summary Judgment Motion itself does not contain the basis for summary judgment, but rather incorporates by reference the Brief in Support of Summary Judgment Motion.

⁷ The Appendix to Summary Judgment Motion is 767 pages.

Motion. Plaintiff filed a Response to Defendant's Reply in Support of Summary Judgment Motion on November 7, 2013. Oral argument was held on December 4, 2013. Following oral argument, counsel for the parties met in chambers. The Court directed counsel to renew settlement negotiations and let the Court know whether or not an agreement had been reached by the end of the year. In early January, counsel reported that there had been offers and counter-offers and that the parties would like a few more weeks to continue negotiating. In late January, the Court was informed that the parties were not able to come to an agreement. Therefore, Defendant's Summary Judgment Motion is now properly before the Court and ripe for decision.

Discussion

Summary Judgment Standard

"A motion for summary judgment may be granted only when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law." *Strine v. Commonwealth*, 894 A.2d 733, 737 (Pa. 2006). In deciding the motion, the Court reviews the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact are resolved in the non-moving party's favor. *Belden & Blake v. Dep't of Conservation & Natural Res.*, 969 A.2d 528, 531 (Pa. 2009).

Plaintiff has the capacity to maintain this lawsuit

Defendant asserts that Plaintiff is not a properly formed non-profit corporation and therefore, does not have the authority to maintain this lawsuit against Defendant. *Brief in Support* p. 19. Defendant alleges that Plaintiff has not filed articles of incorporation, rather Jason Ellis, on behalf of Plaintiff, filed an amendment to articles of incorporation filed by Clyde Seville. *Id.* Defendant's contention is that the Nonprofit Corporation Law (15 Pa.C.S. §§ 5101-6162) is very explicit as to how a non-profit corporation is formed and as a result of Plaintiff failing to comply with the Nonprofit Corporation Law they are not a non-profit corporation, but rather an unincorporated association. *Id.* at 19-20. Additionally, Defendant asserts that the failure of Clyde Seville to hold an organizational meeting pursuant to 15 Pa.C.S. § 5310 was not rectified by Jason Ellis holding an organizational meeting on March 28, 2012. Defendant asserts that pursuant to Pennsylvania Rule of Civil Procedure 2152, this case should have been brought by a member or members of the association as trustee(s) ad litem for the association. *Id.* at 21.

Plaintiff counters that it is a properly formed non-profit corporation with the ability to bring this legal action. *Brief in Opposition* p. 5. Plaintiff asserts that while Pennsylvania law requires an organizational meeting pursuant to 15 Pa.C.S. § 5310(a), there is a great deal of flexibility in who may call and lead this meeting. *Id.* Plaintiff further asserts that subsection (a) must be read in conjunction with subsections (b) and (c).⁸ *Id.* at 7. Plaintiff acknowledges that Clyde Seville was not incapacitated or out of the area at the time the organizational meeting was held, but asserts that death or moving out of state are not the only reason that another can call and hold an organizational meeting of a corporation. Plaintiff asserts that the initial incorporator, Clyde Seville was unable to act on behalf of the Mercersburg Little Leagues in 2012 as his term as Vice-President had ended. *Id.* It is Plaintiff's contention that Jason Ellis, as current President of Mercersburg Little Leagues, had the authority to act to call the organizational meeting. *Id.*

The focus of Defendant's original brief was the inadequacy of the March 28, 2012 meeting called by Jason Ellis on the basis that he was not the original incorporator. In Defendant's Reply in Support of Summary Judgment Motion, Defendant asserts that the March 8, 2012 meeting was legally insignificant. pp. 3-10.

Plaintiff responded that "both of these meetings [held on March 8, 2012 and March 28, 2012] are legally significant because, after due notice, the members in attendance unanimously voted to take the course of action which resulted in Mr. Demory being removed as president, the association being terminated, and the nonprofit corporation assuming the role previously occupied by the association." *Plaintiff's Response to Defendant's Reply in Support* p. 3.

In the extensive record that was submitted to the Court, it does not appear that Mercersburg Little Leagues had a formal policy for handling the resignation/ removal of an officer or holding a special election.⁹ The normal policy was for the members to vote (usually in August) for board positions that were contested or appoint someone who had volunteered or been nominated for a position that was uncontested. Based on the belief that Defendant

8 (b) Call of and action at meeting.—The meeting may be held at the call of any director, or if directors are not named in the articles, of any incorporator who shall give at least five days' notice of the meetings to each other director or incorporator....

(c) Death or incapacity of directors or incorporators.—If a designated director or an incorporator dies or is for any reason unable to act at the meeting, the other or others may act. If there is no other designated director or incorporator able to act, any person for whom a director or incorporator was acting as agent may act or appoint another to act in his stead. (emphasis added)

9 Indeed it does not appear to the Court that Mercersburg Little Leagues had any bylaws or governing documents.

had resigned on February 28, 2012, members sent notice of a special meeting to be held on March 8, 2012 (which Defendant was informed of and chose not to attend) to select a new board. While the meeting held on March 8, 2012 may have been somewhat unusual for Mercersburg Little Leagues, Defendant was unable to point to a policy or procedure that was not followed such that the new board of the unincorporated association elected by the members in attendance did not have authority to act.

The Court finds that Defendant's interpretation of who may hold an organization meeting is too narrow. Clyde Seville was no longer a Mercersburg Little Leagues board member; therefore, while he was physically capable of holding a meeting, he was unable to hold the organization meeting within the meaning of 15 Pa.C.S. § 5310(c). As Clyde Seville had acted on behalf of Mercersburg Little Leagues to form a non-profit corporation, Jason Ellis acting as Vice-President of Mercersburg Little Leagues had the authority to transfer the assets of Mercersburg Little Leagues (the unincorporated association) to the corporation and then hold the organizational meeting of the corporation on March 28, 2012. Mercersburg Youth Baseball, the successor entity of Mercersburg Little Leagues, is a properly formed non-profit corporation, the required organizational meeting having been held. Therefore, Defendant's Motion for Summary Judgment on the basis that Plaintiff does not have the ability to maintain this lawsuit is denied.

Plaintiff has sued Defendant in the appropriate capacity

Defendant asserts that he was not sued in the appropriate capacity because he has never claimed that he is individually entitled to the subject matter that Plaintiff seeks to replevy. *Brief in Support* p. 22. Defendant argues that Plaintiff should have sued Defendant as trustee ad litem for the unincorporated association. *Id.* at 23.

Plaintiff argues that it would be impossible to sue Defendant as trustee ad litem for Mercersburg Little Leagues (the unincorporated association), as it was dissolved on March 28, 2012. *Brief in Opposition* p. 8-9. Additionally, Plaintiff asserts that even if Mercersburg Little Leagues still existed, Defendant's term as President would have expired in August 2013. *Id.* at 9. Plaintiff asserts that Defendant was properly sued in his individual capacity because he was the individual who had possession of the baseball equipment Plaintiff needed to run its youth baseball league and that the other member of the board (Jim Slemph and Cliff Pine) have not prevented Plaintiff from retrieving the equipment and bank accounts that are the subject matter of this litigation. *Id.*

The Court finds that Defendant was correctly sued in his individual capacity. For the reasons outlined in the prior section, the Court finds that Defendant ceased to be the President of Mercersburg Little Leagues on February 28, 2012, and that Mercersburg Little Leagues, the unincorporated association, was dissolved on March 28, 2012. Additionally, it was Defendant who had possession of the baseball equipment and Defendant's name that remains as a signatory on the bank account in question. Therefore, Defendant's Motion for Summary Judgment on the basis that Defendant was incorrectly sued in his individual capacity is denied.

Defendant already turned over the requested baseball equipment, records, membership lists, and rosters that were the subject of the replevin action

Defendant asserts that the replevin claim as to the baseball equipment, records, membership lists, and rosters should be dismissed because Plaintiff judicially admitted that it had received all of the desired items through the Preliminary Injunction. *Brief in Support* p. 24-25.

Plaintiff asserts that while they admitted receipt of the items in the Motion to Dissolve Preliminary Injunction, they have since learned through discovery that Defendant has some items which belong to Plaintiff, including a tablet computer. *Brief in Opposition* p. 10. Plaintiff alleges that despite his word to the contrary, Defendant did not turn over everything in his possession belonging to the youth baseball organization formerly known as Mercersburg Little Leagues. *Id.*

In support of the replevin claim Plaintiff alleged that "Defendant is currently in possession of some of the baseball equipment, records, membership lists, rosters, and some funds belonging to the Plaintiff." *Complaint* ¶ 12. On April 2, 2012, Judge Richard J. Walsh signed an Order for Preliminary Injunction which stated that Defendant was "enjoined from continuing in possession of all baseball equipment, records, membership lists, rosters, and any other items that he obtained from the baseball organization formerly known as Mercersburg Little Leagues" and scheduled a hearing on the matter for April 5, 2012. In the Motion to Dissolve Preliminary Injunction filed on April 5, 2012, Plaintiff states that it had "worked with the Defendant, and had received all of the desired items which were the subject of said Preliminary Injunction." ¶ 3. At Plaintiff's request the hearing on the Preliminary Injunction was canceled.

Not including the bank account, which will be discussed later, Plaintiff requested Defendant turn over equipment,¹⁰ records, membership lists, and rosters in its Petition for Injunctive Relief. Prior to a hearing on

¹⁰ "including, but not limited to balls, bats, helmets, catcher's equipment, and other equipment necessary for the proper function of a youth baseball league." *Petition for Injunctive*

the matter Plaintiff informed the Court that it had received all of the desired items which were the subject of the preliminary injunction. If Plaintiff was concerned that all the baseball equipment, records, membership lists, and rosters had not been turned over then it could have gone forward with the previously scheduled hearing or clarified their response regarding what Defendant had turned over. Additionally, the replevin claim cannot be interpreted as including a computer tablet. Other than the bank account, based on its own admission, Plaintiff received all of the items that were part of the replevin claim on or before April 5, 2012. Therefore, Defendant's Motion for Summary Judgment on the basis that Plaintiff judicially admitted that the baseball equipment, records, membership lists, and rosters were returned is granted.

Bank accounts are not the appropriate subject of a replevin action

Defendant asserts that money may only be recovered through a replevin action if it is susceptible to ready and positive identification and has not been commingled with other funds, such as \$2,000 in \$2 bills that had been placed in a package. *Brief in Support* pp. 27- 28; see *Corn Exchange Nat'l Bank v. Solicitors Loan and Trust Co.*, 41 A. 536 (Pa. 1898). Defendant alleges that Plaintiff's replevin claim for the bank account fails because Plaintiff cannot prove that the funds in question have not been coming with the bank's other account holders' funds. *Brief in Support* p. 28.

Plaintiff asserts that the cases cited by Defendant are distinguishable from the case at bar because Plaintiffs are seeking the return of a bank account rather than cash. *Brief in Opposition* p. 10. Plaintiff alleges that the bank account is readily identifiable, as its location and identity is not in doubt. *Id.* Plaintiff is trying to recover the entire account, which is identifiable by a unique account number. *Id.* at 11.

The state of the law of replevin in Pennsylvania can be summarized as follows:

Generally, replevin is the proper remedy to recover the possession of any kind of *personal property* of which the plaintiff has the right to present possession, which is in the possession of and claimed by another. An action in replevin may be appropriate to recover the possession of various goods and chattels, including an engagement ring; certificates of corporate stock; and the books, records, and papers of an organization. In addition, money, if easily susceptible to ready and positive identification, may be the subject property in a replevin action.

17 Standard Pennsylvania Practice 2d § 96:18 Replevin (internal citations omitted) (emphasis added).

A search of Pennsylvania case law on replevin of bank accounts yields nothing. Therefore, the Court considered other states' decisions on the subject. The consensus is that a sum of money in a bank account does not constitute personal property subject to replevin. *Walther v. Central Trust Co., N.A.*, 590 N.E.2d 375 (Ct. App. Ohio 1990); *Williams Mgt. Enterprises, Inc. v. Buonauro*, 489 So.2d 160 (Fla. App. 1986); *Spear v. Arkansas Nat'l Bank*, 163 S.W. 508 (Ark. 1914). The Court is persuaded by other states' holdings that a bank account is not personal property subject to replevin and finds that a bank account is not the appropriate subject of replevin. Therefore, Defendant's Motion for Summary Judgment on the basis that a bank account is not the appropriate subject of a replevin claim is granted.

Because the Court finds that the baseball equipment, records, membership lists, and rosters that were the subject of the replevin action were already returned and a bank account is not the appropriate subject of a replevin action, the Court will not address Defendant's contention that Plaintiff has failed to establish that it has the right to immediate possession of any of the items at issue. In light of granting Defendant's Summary Judgment Motion as to the replevin claim, the Court dismisses Plaintiff's replevin claim.

There are material issues of fact in regard to the injunction claim

Defendant asserts that as Plaintiff cannot establish a clear right to a permanent injunction, Defendant should be granted summary judgment and the injunction claim should be dismissed. *Brief in Support* p. 33.

Plaintiff asserts that all Defendant argues is that Mercersburg Youth Baseball was not properly formed and is not the successor of Mercersburg Little Leagues. *Brief in Opposition* p. 12. Plaintiff alleges it has the right to prevent Defendant from contacting participants in Plaintiff's league and telling them they are in the wrong league. *Id.* at 12-13.

The Court finds that there is an issue of material fact regarding whether Plaintiff is entitled to injunctive relief, and if so what is appropriate injunctive relief. Therefore, Defendant's Motion for Summary Judgment on the basis that that the injunction claim will fail is denied.

Relief ¶ 4. Based on the non-exclusive list, the Court interprets equipment to mean baseball equipment.

An appropriate Order of Court follows.

ORDER OF COURT

NOW THIS 19th day of February, 2014, upon review and consideration of the,

THE COURT ORDERS:

1.) William Demory's Motion for Summary Judgment on the basis that Mercersburg Youth Baseball is an unincorporated association that does not have the authority to maintain a lawsuit is **DENIED** pursuant to the attached Opinion.

2.) William Demory's Motion for Summary Judgment on the basis that he was incorrectly sued in his individual capacity is **DENIED** pursuant to the attached Opinion.

3.) William Demory's Motion for Summary Judgment on the bases that a bank account is not the appropriate subject of a replevin claim and that the baseball equipment, records, membership lists, and rosters were already turned over is **GRANTED** pursuant to the attached Opinion. Accordingly, the replevin claim is **DISMISSED**.

4.) William Demory's Motion for Summary Judgment on the basis that the injunction claim would fail is **DENIED** pursuant to the attached Opinion.

Pursuant to the requirements of Pa. R. Civ. P. 236 (a)(2), (b) and (d), the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.